# Appendix

## PROVISIONS OF STATE CONSTITUTION.

**Constitution of California, Article XIII, Section 16.**

Notwithstanding any other provision of this Constitution:

1. (a) Banks, including national banking associations, located within the limits of this state, shall annually pay to the state a tax according to or measured by their net income, which shall be in lieu of all other taxes and licenses, state, county and municipal, upon such banks, or the shares thereof, except taxes upon their real property. The amount of the tax shall be equivalent to four per cent of their net income.

(b) The legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof, in lieu of such tax, may provide by law for any other form of taxation now or hereafter permitted by the congress of the United States respecting national banking associations; *provided,* that such form of taxation shall apply to all banks located within the limits of this state.

(c) If it be finally determined that any tax levied upon or respecting any bank, national banking association, or the shares thereof, is invalid, said bank or association, or the shares thereof, shall be reassessed in conformity with any method provided by law. No claim against the state for refund or rebate of taxes paid shall be allowed without first deducting therefrom the amount of any such unpaid reassessment.

2. (a) All financial, mercantile, manufacturing and business corporations doing business within the limits of this state, subject to be taxed pursuant to subdivision (d) of section 14 of this article, in lieu of the tax thereby provided for, shall annually pay to the state for the privilege of exercising their corporate franchises within this state a tax according to or measured by their net income. The amount of such state tax shall be equivalent to four per cent of their net income. Such tax shall be subject to offset, in a manner to be prescribed by law, in the amount of personal property taxes paid by such corporations to the state or political subdivisions thereof, but the offset shall not exceed ninety per cent of such state tax. In any event, each such corporation shall pay an annual minimum tax to the state, not subject to offset, of twenty-five dollars.

(b) The legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof, may provide by law for the taxation by any other method authorized in this Constitution of the corporations, or the franchises, subject to be taxed pursuant to subdivision (a) of paragraph 2 of this section or subdivision (d) of section 14 of this article.

3. The legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof, may change by law the rates of tax, or the percentage, amount or nature of offset provided for in paragraphs 1 and 2 hereof.

4. Notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, mortgages, and any

legal or equitable interest therein, of the classes now taxable to the owner thereof and not otherwise taxed under subdivisions (a) or (b) of section 14 or under section 15 of this article, shall be declared in a manner to be prescribed by law and shall be taxed upon their actual value at the rate of three-tenths of one per cent. The legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof, may by law change the rate or rates upon any one or more of the classes of property herein enumerated, provided that no rate shall exceed four-tenths of one per cent. Said tax shall be in lieu of all other property taxes thereon, and the proceeds of said tax shall not go to the state but to such political subdivisions thereof, and in such manner, as may be provided by law.

5. The legislature shall define "corporations" and "doing business"; shall define "net income", and may define it to be the entire net income received from all sources; shall provide for the allocation of income, for the assessment, levy and collection of the aforesaid taxes, and for reassessment in the event of the invalidity of any tax under 2(a) or 2(b) hereof. Said taxes shall become a lien on the first Monday in March of 1929 and of each year thereafter. The legislature shall pass laws necessary to carry out this section. The acts of the forty-eighth session of the legislature passed pursuant to this section shall be effective immediately upon their passage. (New section adopted November 6, 1928.)

**Constitution of California, Article XIII, Section 14, Subdivision (d).**

All franchises, other than those expressly provided for in this section, shall be assessed at their actual cash value, in the manner to be provided by law, and shall be taxed at the rate of one per centum each year, and the taxes collected thereon shall be exclusively for the benefit of the state.

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**CALIFORNIA BANK AND CORPORATION FRANCHISE TAX ACT.**

**Statutes of California, 1929, Chapter 13, page 19, as amended by Statutes of California, 1929, Chapter 781, page 1555.**

An act to carry into effect the provisions of section 16 of article thirteen of the constitution of the State of California, relating to bank and corporation taxes.

(Approved by the Governor March 1, 1929. In effect immediately.)

*The people of the State of California do enact as follows:*

Section 1. Every national banking association located within the limits of this state, shall annually pay to the state a tax according to or measured by its net income, to be computed, in the manner hereinafter provided, at the rate of four per centum upon the basis of its net income for the next preceding fiscal or calendar year. The state is hereby adopting the method numbered (4) authorized by the act of March 25, 1926, amending section 5219 of the Revised Statutes of the United States.

Sec. 2. Every bank, other than a national banking association, doing business within the limits of this state, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed, in the manner hereinafter provided, at the rate of four per centum upon the basis of its net income for the next preceding fiscal or calendar year.

Sec. 3. The tax referred to in sections 1 and 2 hereof shall be in lieu of all other taxes and licenses, state, county and municipal, upon the banks and banking associations therein mentioned, except taxes upon their real property.

Every such bank and banking association shall be entitled to an offset against the tax referred to in sections 1 and 2 hereof, in the manner hereinafter provided, in the amount of ten per centum of taxes paid upon its real property to any county, city and county, city, town, or other political subdivision of the state, but the total offset shall not exceed seventy-five per centum of its total tax levied hereunder.

Sec. 4. Every financial, mercantile, manufacturing and business corporation doing business within the limits of this state, of the classes referred to in subdivision 2(a) of section 16 of article thirteen of the constitution of this state, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed, in the manner hereinafter provided, at the rate of four per

centum upon the basis of its net income for the next preceding fiscal or calendar year.

Each such corporation shall be entitled to an offset against said franchise tax, in the manner hereinafter provided, in the amount of taxes paid upon its real and personal property to any county, city and county, city, town, or other political subdivision of the state, but the total offset shall not exceed seventy-five per centum of the said franchise tax, and in no case shall the taxpayer be entitled to offset more than ten per centum of its said real property taxes.

In any event, each such corporation shall pay annually to the state, for the said privilege, a minimum tax of twenty-five dollars.

Taxes under this section and under sections 1 and 2 of this act shall accrue on the first day after the close of the "taxable year," as defined in section 11 hereof.

Sec. 5. The term "corporation," as herein used, shall include every financial corporation, other than a bank or banking association, and every mercantile, manufacturing and business corporation of the classes referred to in subdivision one (c) of section 5219 of the Revised Statutes of the United States.

The term "bank," as hereinafter used, shall include national banking associations.

The term "doing business," as herein used, means any transaction or transactions in the course of its business by a corporation created under the laws of this state, or by a foreign corporation qualified to do or doing intrastate business in this state.

Sec. 6. The term "gross income," as herein used, includes gains, profits and income derived from the business, of whatever kind and in whatever form paid; gains, profits or income from dealings in real or personal property; gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise received in carrying on such business; all interest received from federal, state, municipal or other bonds, and, except as hereinafter otherwise provided, all dividends received on stocks.

Sec. 7. The term "net income," as herein used, means the gross income less the deductions allowed.

Sec. 8. In computing "net income" the following deductions shall be allowed:

(a) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and rentals or other payments required to be made as a condition to the continued use or possession for business purposes of property to which the taxpayer has not taken or is not taking title or in which it has no equity.

(b) All interest paid or accrued during the taxable year on indebtedness.

(c) Taxes or licenses paid or accrued during the taxable year, other than taxes paid to the state under this act or under subdivision (d) of section 14 of article thirteen of the constitution of this state, and other than taxes on income or profits paid or accrued

within the taxable year imposed by the authority of (1) any foreign country, (2) any state, territory, county, city and county, school district, municipality, or other taxing subdivision of any state or territory, and other than taxes assessed against local benefits of a kind tending to increase the value of the property assessed, but this shall not exclude the allowance as a deduction of so much of said taxes assessed against local benefits as is properly allocable to maintenance or interest charges; *provided, however,* that the deduction of real and personal property taxes shall be subject to the provisions of section 26 hereof; *and provided, further,* that the deduction allowed for federal income taxes shall be the amount of such taxes accrued during the taxable year.

(d) Losses sustained during the taxable year and not compensated for by insurance or otherwise, except that such losses may, with the consent of the franchise tax commissioner, hereinafter designated "commissioner," be accounted for as of a different period. In the case of any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of such sale or other disposition, the taxpayer has acquired (otherwise than by bequest or inheritance) or has entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or other disposition, no deduction for the loss shall be allowed unless the claim is made by a taxpayer, a dealer in stocks or securities, and with respect to a transaction made in

the ordinary course of its business. If such acquisition or the contract or option to acquire is to the extent of part only of substantially identical property, then only a proportionate part of the loss shall be disallowed. Upon the subsequent sale or disposition of shares of stock or securities, in respect of which a loss has been disallowed, the basis for measuring gain or loss in the case of the property so acquired shall be the basis in the case of the stock or securities so sold or disposed of, except that if the repurchase price was in excess of the sale price such basis shall be increased in the amount of the difference, or if the repurchase price was less than the sale price such basis be decreased in the amount of the difference.

(e) Debts ascertained to be worthless and charged off within the taxable year, or, in the discretion of the commissioner, a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable in part only, the commissioner may allow such debt to be charged off in part. In the case of a debt existing on the date fixed by section 19 hereof for the ascertainment of a gain or loss on the part of the taxpayer, no more than its fair market value on that date shall be deducted.

(f) Exhaustion, wear and tear and obsolescence of property to be allowed upon the basis provided in sections 113 and 114 of that certain act of the congress of the United States known as the "Revenue act of 1928," which is hereby referred to and incorporated with the same force and effect as though fully set forth herein, or upon the basis provided in section 19 hereof.

(g) In the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements according to the peculiar conditions in each instance, such reasonable allowance in all cases to be made under the rules and regulations to be prescribed by the commissioner.

In the case of leases the deduction shall be equitably apportioned between the lessor and lessee.

The basis upon which depletion is to be allowed in respect of any property shall be as provided in sections 113 and 114 of the said revenue act of 1928, or upon the basis provided in section 19 hereof.

In the case of mines discovered by the taxpayer after February 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within thirty days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost. The depletion allowance based on discovery value provided in this paragraph shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance be less than it would be if computed without reference to discovery value. Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after February 28, 1913, if the vein

or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

In the case of oil and gas wells the allowance for depletion shall be 27½ per centum of the gross income from the property during the taxable year. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

(h) Dividends received during the taxable year from income arising out of business done in this state; but if the income out of which the dividends are declared is derived from business done within and without this state, then so much of the dividends shall be allowed as a deduction as the amount of the income from business done within this state bears to the total business done.

The burden shall be on the taxpayer to show that the amount of dividends claimed as a deduction has been received from income arising out of business done in this state.

(i) In the case of a building and loan association, organized and operating wholly or partly on a mutual plan, the return paid or credited on or apportioned to the withdrawable shares of such association, but not

exceeding the return such shares would receive computed at the average rate paid by all such associations in this state, or by such associations in a particular locality, as the building and loan commissioner of this state may determine, on money borrowed or obtained through the issue during the taxable year of the association of all classes of notes and investment certificates not evidencing any proprietary interest in the association, such rate to be determined by the building and loan commissioner and certified by him to the franchise tax commissioner on or before the fifteenth day of January of each year.

(j) In the case of a mutual savings bank, the entire amount of interest paid to depositors possessing no proprietary interest in the institution or in its surplus, and interest on their deposits to members possessing a proprietary interest in the institution or in its surplus at a rate determined by the state superintendent of banks to be the going rate of interest upon savings deposits in the state during the preceding calendar year, such rate to be certified by him to the commissioner on or before the fifteenth day of January of each year.

(k) In the case of farmers', fruit growers', or like associations organized and operated in whole or in part on a cooperative or a mutual basis, (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, which may include reasonable reserves, on the basis of either the quantity or the value of the products fur-

nished by them; or (b) for the purpose of purchasing, or producing, supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses, all income resulting from or arising out of such business activities for or with their members carried on by them or by their agents; or when done on a nonprofit basis for or with nonmembers.

(l) In the case of other associations organized and operated in whole or in part on a cooperative or a mutual basis, all income resulting from or arising out of business activities for or with their members, or with nonmembers, done on a nonprofit basis.

If any deduction provided for in this section is finally adjudged discriminatory against a national banking association contrary to section 5219 of the Revised Statutes of the United States, or is for any reason finally adjudged invalid, in that event the tax of the favored taxpayer shall be recomputed by the tax commissioner for the taxable year in question, as of the time of the allowance of the deduction, by disallowing the deduction, and any difference between the amount of the tax as recomputed and the amount of the tax as originally computed shall be subject to the provisions hereof relating to original computations.

Sec. 9. In computing net income no deduction shall be allowed for:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property; or for

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or for

(c) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy, but the amount received under such a policy by reason of the death of the insured and amounts received under other life insurance, endowment and annuity contracts of the type whose premiums are disallowed, equal to the total amount of premiums paid thereon shall not be included in gross income.

Sec. 10. If the entire business of the bank or corporation is done within this state, the tax shall be according to or measured by its entire net income; and if the entire business of such bank or corporation is not done within this state, the tax shall be according to or measured by that portion thereof which is derived from business done within this state. The portion of net income derived from business done within this state shall be determined by an allocation upon the basis of sales, purchases, expenses and manufacture, payroll, value and situs of tangible property, or by reference to these or other factors, or by such other method of allocation as is fairly calculated to assign to the state the portion of net income reasonably attributable to the business done within this state and to avoid subjecting the taxpayer to double taxation.

If the commissioner reallocates net income upon his examination of any return, he shall, upon the written request of the taxpayer, disclose to him the basis upon which his reallocation has been made.

Sec. 11. (a) The term "taxable year," as herein used, means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed herein. "Taxable year" includes, in the case of a return made for a fractional part of a year, the period for which such return is made.

(b) The term "fiscal year," as herein used, means an accounting period of twelve months ending on the last day of any month other than December.

(c) The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed hereunder.

Sec. 12. The net income shall be computed upon the basis of the taxpayer's annual accounting period, fiscal year or calendar year as the case may be, in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of said commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year, or if the taxpayer has no annual accounting period or does not

keep books, the net income shall be computed on the basis of the calendar year.

Sec. 13. Every bank and corporation shall within two months and fifteen days after the close of its taxable year, transmit to the commissioner a return in a form prescribed by him, specifying, for the taxable year, all such facts as he may by rule, or otherwise, require in order to carry out the provisions of this act; *provided,* that there shall be granted a general extension of time of two months in the case of returns required to be filed March 15, 1929, and of one month in the case of returns required to be filed April 15, 1929.

On or before May 15, 1929, every bank or corporation with a fiscal year ended during the calendar year 1928 shall file a return covering such fiscal year, and its tax for the months of the year 1929, corresponding to the months of 1928 which fall within the fiscal year ended during 1928, shall be according to or measured by such proportionate part of the net income of that fiscal year as the number of months falling within the calendar year 1928 bears to the total number of months in the fiscal year ended during that calendar year.

A bank which locates or commences to do business within the limits of this state, and a corporation which commences to do business in this state, after the effective date of this act, shall thereupon prepay the minimum tax hereunder, and upon the filing of its return within two months and fifteen days after the close of its taxable year its tax for that year shall be adjusted upon the basis of the net income received during that taxable year. Said return shall also, in accordance with sections 23 to 26, inclusive, be the basis for the

tax of said bank or corporation for its second taxable year.

Any bank or corporation which is dissolved during any taxable year shall only be obliged to pay a tax hereunder for the months of the taxable year prior to such dissolution according to or measured by such proportionate part of the net income of the preceding taxable year as the number of months of the taxable year during which such corporation is dissolved and prior to such dissolution bears to the entire taxable year. In any event, each such corporation shall pay a minimum tax of twenty-five dollars for such period.

The tax liability imposed under this act shall attach whether a bank or corporation has a taxable year of twelve months or of lesser duration.

Sec. 14. In the case of two or more corporations or banks or of one or more banks and one or more corporations owned or controlled directly or indirectly by the same interests, the commissioner is authorized to distribute, apportion, or allocate gross income or deductions between or among such corporations or banks, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such corporations or banks.

An affiliated group of banks or corporations, or of one or more banks and one or more corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for any taxable year in lieu of separate returns. In the case of a bank or corporation which is a member of the

affiliated group for a fractional part of the year the consolidated return shall include the income of such bank or corporation for such part of the year as it is a member of the affiliated group. As used in this section an affiliated group means one or more banks or corporations connected through stock ownership with a common parent bank or corporation if, at least ninety-five per centum of the stock of each of the banks or corporations, except the common parent bank or corporation, is owned directly by one or more of the other banks or corporations, and the common parent bank or corporation owns directly at least ninety-five per centum of the stock of at least one of the other banks or corporations; or if at least ninety-five per centum of the stock of each of the banks or corporations is owned by the same interests or by the same stockholders. As used in this section the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

Sec. 15. Every return required by this act to be filed with said commissioner shall be verified by an executive officer of the bank or corporation. Blank forms of return shall be furnished by said commissioner on application, but failure to secure such a form shall not release any taxpayer from the obligation of making a return hereunder.

A reasonable extension of time for filing return may be granted by said commissioner whenever in his judgment good cause exists therefor, and he shall keep a record of every extension and the reason therefor. No such extension or extensions shall aggregate more than ninety days.

Sec. 16. If any return required by this act is not made, the commissioner is authorized to make an estimate of the net income and to compute and levy the amount of tax due under this act from any information in his possession.

Sec. 17. Whenever, in the opinion of the commissioner, the use of inventories is necessary clearly to determine the income of any taxpayer, inventory shall be taken by such taxpayer upon such basis as the commissioner may prescribe, conforming as nearly as may be to the best accounting practice and most clearly reflecting the income.

Sec. 18. Any bank or corporation failing or refusing to furnish any return hereby required to be made, or failing or refusing to furnish a supplemental return or other data required by the commissioner, or rendering a false or fraudulent return, shall be guilty of a misdemeanor and subject to a fine of not exceeding five thousand dollars ($5000) for each such offense.

Any person required to make, render, sign, or verify any report, as aforesaid, who makes any false or fraudulent return, with intent to defeat or evade the assessment required by law to be made, shall be guilty of a misdemeanor, and shall for each such offense be fined not less than three hundred dollars ($300) and not more than five thousand dollars ($5000), or be imprisoned not exceeding one year in the county jail of the county where said return was verified, or be subject to both said fine and imprisonment, in the discretion of the court.

Sec. 19. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposi-

tion of property, real, personal or mixed, acquired on or after January 1, 1928, the basis shall be the cost thereof, or the inventoried value if the inventory is made in accordance with this act, and in the case of property acquired prior to January 1, 1928, and disposed of thereafter, the basis shall be the fair market value thereof as of said date.

The basis shall be diminished by the amount of the deductions for exhaustion, wear and tear, obsolescence and depletion which have, since the basic date, been allowable in respect of such property under this act.

Sec. 20. Upon the sale or exchange of property the entire amount of the gain or loss, determined under the preceding section shall be recognized, with the exceptions provided for in section 112 of said "Revenue act of 1928," which are hereby referred to and incorporated with the same force and effect as though fully set forth herein.

In the case of installment sales the taxpayer may elect to proceed in the manner provided in section 44 of the said revenue act of 1928, in which case the taxpayer shall account for profits on installments received subsequent to December 31, 1927, on sales made prior thereto. If the taxpayer elects to proceed otherwise, the transaction will be deemed to have been closed when the sale was made.

Sec. 21. When property is exchanged for other property and no gain or loss is recognized under the provisions of the preceding section, the property received shall be treated as taking the place of the property exchanged therefor.

Sec. 22. The franchise tax commissioner, herein referred to, shall be appointed by the director of the department of finance, the controller of the state and the chairman of the state board of equalization, who are authorized to provide him with such assistants as they may deem necessary, and he shall serve for such period, and for such compensation, and under such conditions, as they may prescribe.

He shall have power, and it shall be his duty, to administer this act, and to prescribe all such rules and regulations as are necessary and reasonable to carry out its provisions; and said commissioner and the state board of equalization, for the purpose of administering their duties under this act, each shall have the powers conferred upon said board by section 3669e of the Political Code of this state.

Sec. 23. One-half the amount of tax disclosed by the return, after allowing the offset herein provided for, shall be due and payable on or before the fifteenth day of the third month following the close of the taxable year, as defined in section 11 hereof. The balance of the tax shall be due and payable on or before the fifteenth day of the ninth month following the close of the taxable year. A tax imposed by this act or any installment thereof may be paid at the election of the taxpayer, prior to the date prescribed for its payment.

Where an extension of time for filing returns has been granted by the commissioner under the provisions of section 15 of this act, the first installment shall be paid prior to the expiration of such extension.

If one-half of the tax is not paid on or before its due date, or the due date as extended by the commissioner, it shall be delinquent and a penalty of fifteen per centum added thereto. If the balance is not paid at the time it is due and payable, it shall be delinquent and a penalty of five per centum added thereto. At the time of the delinquency of the second installment an additional penalty of five per centum shall be added to the first installment unless that installment has theretofore been paid.

All taxes and interest imposed under this act must be paid to the commissioner at Sacramento in the form of remittances payable to the treasurer of the State of California, and he shall transmit said payments daily to the state treasurer. All moneys received by the state treasurer shall be deposited by him in a special fund in the state treasury, to be designated the bank and corporation franchise tax fund, and moneys in said fund shall, upon the order of the state controller, be transferred into the general fund of the state, or drawn therefrom for the purpose of refunding to taxpayers hereunder.

Sec. 24. (a) Interest upon the amount determined as a deficiency under the provisions of section 25 of this act shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the commissioner, and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed.

(b) If the time for the payment of the tax or any installment thereof has been extended, under the provisions of section 23 of this act, there shall be collected as part of such tax, interest thereon at the rate of six per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension.

(c) If the amount determined by the taxpayer as the tax imposed by this act, or any installment thereof, or any part of such amount or installment is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of one per centum a month from the date prescribed for its payment until it is paid.

(d) Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined as provided hereinabove, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subsection (b) of this section, interest at the rate of one per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(e) Where a deficiency, or any interest or penalties assessed under this act have not been paid in full within ten days from the date of notice and demand

from the commissioner, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of one per centum a month from the date of such notice and demand until such assessment is paid.

Sec. 25. As soon as practicable after the return is filed the commissioner shall examine it and shall determine the correct amount of the tax. If the commissioner determines that the tax disclosed by the original return is less than the tax disclosed by his examination he shall mail notice to the taxpayer at its post-office address (which must appear on its return) of the aditional tax proposed to be assessed against it. Such notice shall set forth the details of the proposed additional assessment and of computing said tax.

Within sixty days after the mailing of said notice the taxpayer may file with the commissioner a written protest against the levy of the proposed additional tax, as computed by the commissioner, specifying therein the grounds upon which the protest is based. The protest must be under oath.

If no such protest is so filed the amount of the tax shall be final upon the expiration of said sixty-day period. If a protest is so filed it shall be the duty of the commissioner to reconsider the computation and levy of the tax complained of, and if the taxpayer has so requested in its protest, it shall be the duty of the commissioner to grant said taxpayer, or its authorized representatives, an oral hearing. After consideration of the protest and the evidence adduced in the event of such oral hearing, the commissioner's action upon the protest shall be final upon the expiration of thirty

days from the date when he mails to the taxpayer notice of his action, unless within that thirty-day period the taxpayer appeals in writing from the action of the commissioner to the state board of equalization. The appeal must be addressed and mailed to the state board of equalization at Sacramento, and a copy of the appeal addressed and mailed at the same time to the commissioner at Sacramento. The determination by said board upon said appeal of the amount of the tax shall be final, and said board shall forthwith notify the taxpayer and the commissioner of its determination.

When a deficiency has been determined and the tax has become final under the provisions of this section, the commissioner shall mail notice and demand to the taxpayer for the payment thereof, and such tax shall be due and payable at the expiration of ten days from the date of such notice and demand.

A certificate by the commissioner or of said board as the case may be, of the mailing of the notices specified in this section shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of said notices.

Sec. 26. A corporation subject to the tax herein provided for, shall receive an offset against said tax, subject to the limitations provided in section 4 hereof, for real and personal property taxes paid upon its property to any county, city and county, city, town or other political subdivision of the state during the taxable year. Every bank and banking association subject to the tax herein provided for shall receive

an offset against said tax, subject to the limitations provided in section 3 hereof, for taxes paid upon its real property during the taxable year to any county, city and county, city, town, or other political subdivision of the state. At the time of payment of first installment of tax under the provisions of section 23 of this act, each taxpayer claiming an offset against the tax shall submit to the commissioner evidence in such form as he shall prescribe in support of such claims.

Where a consolidated return has been made under section 14 hereof the offset allowable against the tax liability of the consolidated group may include said property taxes paid during said period by all corporations which are included in the consolidated group, subject to the limitations of section 4 hereof.

If a corporation in paying the tax provided for in this act desires to claim an offset in the computation of its tax, the four per centum rate shall be applied to such offset and the amount so computed shall be added to and included in the tax of the corporation.

Sec. 27. If in the opinion of the commissioner, or said board, as the case may be, a tax has been computed in a manner contrary to law or has been erroneously computed by reason of a clerical mistake on the part of the commissioner or said board, such fact shall be set forth in the records of the commissioner, and the amount of the illegal levy shall be refunded to the taxpayer or its successor through reorganization, merger, or consolidation, or to stockholders upon dissolution.

If any tax or penalty has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, the commissioner shall certify to the state board of control the amount collected in excess of what was legally due, from whom it was collected, or by whom paid, and if approved by that board, the same shall be refunded to the taxpayer, but no such refund shall be made unless a claim therefor is filed by the taxpayer with the commissioner.

Interest on refunds shall be allowed and paid at the rate of six per centum per annum from the date of the overpayment to a date preceding the date of the refund warrant by not more than thirty days, such date to be determined by the commissioner.

In the event that a tax has been illegally levied against a taxpayer the commissioner shall certify such fact to the state board of control and said board shall authorize the cancellation of the tax upon the records of the commissioner.

Sec. 28. In the event that fraud or evasion on the part of a taxpayer is discovered by the commissioner, he shall have the power and it shall be his duty to determine the extent to which the state has been defrauded and to compute and charge against the taxpayer a tax in that amount which shall be immediately due and payable.

Sec. 29. The taxes levied under this act shall constitute a lien upon all property of the taxpayer, which lien shall attach on the first Monday of March of each year. Every tax herein provided for has the effect

of a judgment against the taxpayer, and every lien has the effect of an execution duly levied against all property of the delinquent, and the judgment is not satisfied nor the lien removed until the tax and the penalty are paid, or the property sold for the payment thereof. No decree of dissolution shall be made and entered by any court, nor shall the county clerk of any county or the secretary of state file any such decree, or file any other document by which the term of existence of any taxpayer shall be reduced or terminated until the tax and penalty shall have been paid.

Sec. 30. Any taxpayer claiming that the tax computed and levied against it is void in whole or in part may pay its tax under protest and bring an action against the state treasurer for the recovery of the whole or any part of the amount paid. The protest must be in writing and must state the grounds upon which the claim is founded. Such action must be filed within ninety days from the date of mailing the notice of final determination of the tax under section 25 hereof; *provided,* that no action shall be filed unless the taxpayer has made protest to the commissioner of the computation and levy complained of under the provisions of section 25 hereof.

When a refund claim has been filed under the provisions of section 27 hereof, and the same has been denied or no action thereon has been taken by the commissioner within six months from the filing thereof, the taxpayer may bring an action against the state treasurer on the grounds set forth in such claim for

the recovery of the whole or any part of the amount claimed as an overpayment, but such action must be brought within ninety days from the date of the commissioner's final action upon such claim.

Whenever under the provisions of this section an action is commenced against the state treasurer, a copy of the complaint and the summons must be served upon the treasurer, or his deputy. At the time the treasurer demurs or answers, he may demand that the action be tried in the superior court of the county of Sacramento, which demand must be granted. The attorney general must defend the action. The provisions of the Code of Civil Procedure, relating to pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for. A failure to begin such action within the time herein specified shall be a bar against the recovery of such taxes. In any such action the court shall have power to render judgment for plaintiff for any part or portion of the tax, interest, penalties or costs found to be void and so paid by plaintiff upon such assessment.

In any judgment of any court rendered for any overpayment in respect of any tax imposed by this act, interest shall be allowed at the rate of six per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund warrant by not more than thirty days, such date to be determined by the commissioner.

Sec. 31. At any time within a year after the delinquency of any tax, or any installment thereof, the

controller of the state may bring an action in a court of competent jurisdiction in the county of Sacramento in the name of the people of the State of California to collect the amount delinquent, together with penalties. The attorney general must prosecute such action, and the provisions of the Code of Civil Procedure, relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for. In such action a writ of attachment may be issued, and no bond or affidavit previous to the issuing of said attachment is required. In such action a certificate by the commissioner or by the controller showing the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency and of compliance by the commissioner and the state board of equalization with all the provisions of this act in relation to the computation and levy of the tax.

Sec. 32. If a tax computed and levied hereunder is not paid before six o'clock p. m. on the last day of the twelfth month after the date of delinquency of the first installment thereof, the corporate powers, rights and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation it shall thereupon forfeit its right to do intrastate business in this state.

The controller shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension or for-

feiture herein provided for shall become effective immediately such record is made, and the certificate of the secretary of state shall be prima facie evidence of such suspension or forfeiture.

Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic corporation, or who transacts or attempts to transact any intrastate business in this state in behalf of any such foreign corporation shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not less than fifty days or more than five hundred days, or by both such fine and imprisonment. The jurisdiction of such offense shall be held to be in any county in which any part of such attempted exercise of such powers, or any part of such transaction of business occurred. Every contract made in violation of this section is hereby declared to be voidable.

Sec. 33. Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing and paying the tax and the interest and penalties for nonpayment of which the suspension of forfeiture occurred. Application for revivor may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the state controller. In case the application is made in any taxable year other than the taxable

year in which the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year in which the suspension or forfeiture occurred, and upon such payment the controller shall issue a certificate of revivor and thereupon the applicant shall be revived. The revivor shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of revivor shall be prima facie evidence of the revivor. Any certificate provided for in this section may be recorded in the office of the county recorder in any county of this state.

In case any corporation has adopted subsequent to such suspension or forfeiture any name so closely resembling the name of such reviving corporation as will tend to deceive, then such reviving corporation shall be entitled to a certificate of revivor pursuant to the terms of this section only upon the adopting by such corporation seeking revivor of a new name, and in such case nothing in this section contained shall be construed as permitting such reviving corporation to carry on any business under its former name. Such reviving corporation shall have the right to use its former name or take such new name only upon filing an application therefor with the secretary of state, and upon the issuing of a certificate to such corporation by the secretary of state, setting forth the right of such corporation to take such new name or use its former name as the case may be. The secretary of state shall not issue any certificate permitting any

corporation to take or use the name of any corporation heretofore organized in this state and which has not suffered a forfeiture under either of the acts in this section first above mentioned, or to take or use a name so closely resembling the name of any corporation heretofore organized in this state as will tend to deceive.

Sec. 34. If any tax hereunder is finally adjudged illegal in whole or in part, it shall be the duty of the commissioner, and he shall have the power, to cause the tax to be recomputed for and as of the taxable year for which the illegal tax was computed; and the provisions hereof relating to original computations shall apply to the tax as recomputed.

Sec. 35. It shall be unlawful for the commissioner or any member of the state board of equalization, or the state controller, or any person having an administrative duty under this act to divulge any information concerning the business affairs of banks or corporations reporting hereunder; *provided, however,* that the governor may authorize examination of such returns by other state officers, in which event the information obtained shall not be made public; *provided, further,* that such returns may be examined, with the consent of the governor, by tax officers of another state or the federal government, if a reciprocal arrangement exists.

Any violation of the provisions of this section shall be a misdemeanor punishable by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or both.

Sec. 36. Upon the request of a taxpayer under this act, it shall be the duty of the tax-collecting officer of a county, city and county, city, town, or other political subdivision of this state, to furnish an official receipt for real and personal property taxes paid to him setting forth a description of such property, the assessed valuation thereof, the rate of tax, the amount of taxes paid, and the beginning and ending of the year for which the taxes are paid.

Sec. 37. This act shall be known as the Bank and Corporation Franchise Tax Act.

Sec. 38. If any portion in this act is invalid the Legislature hereby declares that had it known of the invalidity of the portion at the time of this enactment it would have passed the remainder of this act without the invalid portion, and that it is the intention of the Legislature that the remainder of this act operate in the event of the invalidity of any portion of this act.